

10 MAR 1978

MEMORANDUM FOR: Deputy Director for Administration

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Civil Service Reform Bill of 1978

REFERENCE : Draft copy of the subject Bill

1. Attached is a summarization by Title, Chapter and Section, of the Civil Service Reform Bill of 1978.

2. This is an amending Bill for numerous chapters and sections of Title 5, U.S. Code, and necessary exemptions for CIA are required in each of the pertinent parts. The specific items for which we recommend exemptions be sought are marked in red on the summarization and are listed herein for easy reference.

A. Title I, Section 101 - Inserts new Chapter 23 in Title 5, U.S. Code. The exemption in this title as now written applies only to Section 2301, Merit Principles. We recommend the Agency ask for an exemption from the entire Chapter 23, Principles, Prohibited Practices and GAO audit.

B. Title II, Section 201 - Revised Chapter 11 establishes functions of the Office of Personnel Management; no exceptions are noted. Defer to OGC if new wording in Chapter 11 would require an exemption for CIA.

C. Title II, Section 202 - Inserts new Chapter 12 in Title 5, U.S.C., establishing Merit Systems Protection Board and Special Counsel. As drafted there are no exemptions. Recommend CIA be exempted from Chapter 12 on security basis . . . protection of names, et al.

D. Title V, Section 501 - Establishes a new Part III of Title 5, Merit Pay, to replace the within-grade and comparability pay for supervisors in grades GS 13-15. Recommend CIA request exemption from Part III as inclusion would abrogate the Director's statutory authority to establish pay systems to meet the needs of the Agency. Exemption

would permit Agency to adopt the system if it is found feasible, albeit is designed for the "rank in position" Civil Service system viz the Agency's modified "rank in person" management system.

E. Title VI, Section 601 - Adds a new Chapter 47 to Title 5, U.S.C., for Research, Demonstration and Other Programs. Recommend Agency request exemption from Chapter 47 to avoid possible conflict with OPM requirements to evaluate personnel management research or development projects in CIA.

3. After the review of the draft Bill was completed, a copy of H.R. 11280 was received which appears to be the same as the draft Bill commented on herein.

STATINTL

F. W. M. Janney)

Att.

CIVIL SERVICE REFORM ACT OF 1978

The Civil Service Commission draft of the Civil Service Reform Act of 1978, undated copy, has been reviewed for its impact on CIA. The original draft of the Bill (handed out at the IAG, 6 February) specifically included the Agency. Subsequently the Deputy Director for Administration spoke with Alan Campbell, Chairman, CSC, who agreed the Agency should be exempt. The current version supposedly contained the exemptions, but the exempting clauses are inserted in only a few sections and do not appear to be sufficiently inclusive. Because the Bill is an amending statute, and amends or revises different numerous sections of title 5, U.S.C., it probably would be difficult to exclude CIA or the Intelligence Agencies by one all-inclusive clause. Unless there is some particular drafting technique for Bills of this type, we believe each pertinent section or chapter should contain the required exemptions. In point of fact, the change to Chapter 41, 5 U.S.C., Training, is an authority the Agency would want to have as well as Agency authority to determine personnel shortage categories.

Title I, Merit System Principles

Section 101 amends 5 U.S.C. by adding a new Chapter 23.

Section 2301, pages 5-6

Cites the eight merit system principles and specifically exempts CIA from the section . . . 2301(a)(2)(B).

Section 2302, page 9

Cites the personnel practices which are prohibited as in violation of the merit system principles listed in Section 2301. Makes the head of each executive agency responsible for the prevention of prohibited personnel practices and for compliance with enforcement of applicable Civil Service laws, rules and regulations, as well as other aspects of personnel management. This responsibility applies as well to the individual to whom the head of agency delegates authority for personnel management.

Comment:

As presently stated, CIA is not exempt from the provisions of this section, e.g., to comply with the Civil Service laws, rules and regulations.

Section 2303, page 12

Provides for GAO audit and review to assure compliance with the laws, rules and regulations governing employment in the Executive Branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

Comment:

As written, CIA would be subject to the provisions of this section and would thereby be subject to GAO audit to determine compliance with the Civil Service laws, rules and regulations governing employment in the Executive Branch.

Recommendation:

✓ The exemption cited in Section 2301 be revised to exempt CIA (and the listed Intelligence Agencies if appropriate) from the

entire Chapter 23. It may be that the use of "section" in (a)(2) was meant to be "subchapter".

Title II - Civil Service Functions

Section 201 amends Chapter 11, 5 U.S.C., with a complete revision.

Section 1101-1104, pages 14-17

These sections establish the Office of Personnel Management, the Director, Deputy Directors and Associate Directors thereof, and lists the functions of the office and delegation authorities. A principal function is the "executing, administering and enforcing the civil service rules and regulations of the President and the Offices and the statutes governing the civil service".

Comment:

✓ If we are exempt from the provisions of Chapter 23 as recommended, e.g., from compliance with and audit for compliance with civil service laws, et al, it would seem the Agency would also be exempting the D/OPM authority in this section for administration and enforcing of civil service laws, rules, etc. There are no exemptions cited in this chapter. We defer to OGC if an exemption is required for this new version of Chapter 11. There are none in the present statute for the Civil Service Commission.

Section 202(a) amends title 5, U.S.C., by inserting new Chapter 12, Merit Systems Protection Board and Special Counsel.

Section 1200-1207, pages 18-28

These sections provide for the establishment and the functions of the Merit Systems Protection Board and Special Counsel. Provides

the authority for the Board and the Special Counsel to issue subpoenas, require production of documentary evidence, etc. and investigate allegations of prohibited personnel practices, etc.

Comment:

Does not contain an exemption for CIA.

Recommendation:

✓ This chapter must include an exemption for CIA based on security concerns, e.g., protection of names, et al. This exemption can be provided by adding to the (a) clause of both Sections 1205 and 1206:

" . . . may, except for employees of agencies
exempted in Section 2301(a)(2)(B) . . ."

if all Intelligence Agencies should be exempt.

Section 203(a) revises Chapter 43 of 5 U.S.C. in total.

Section 4301-4305, page 29-35

This subchapter provides for the performance appraisal systems, defines unacceptable performance, provides for actions based on unacceptable performance, and lists responsibilities of the OPM with regard to appraisal systems and promulgations of regulations to carry out the purpose of Chapter 43.

Comment:

CIA is specifically exempt from the provisions of this subchapter . . . 4301(1)(ii), page 29.

Section 204(a) amends Chapter 75 of 5 U.S.C. by striking out Subchapters I and II and inserting wholly new Subchapters I and II relative to suspension for less than 30 days and suspension for more than 30 days.

Comment:

Subchapter I (Sections 7501-7504, pages 35-37) is addressed to the competitive service, hence CIA is exempt.

Subchapter II (Sections 7511-7514, pages 37-41) is addressed to the competitive service, but also specifically provides for the "preference eligible in an executive agency in the excepted service".

Section 7511(b)(2)(B) states the subchapter does not apply to employees in certain positions (confidential, policy determining, policy advocating) as determined by "the head of an agency for a position which is excepted from the competitive service by statute". This wording is normally used in connection with Schedule C positions.

Section 8a of the CIA Act of 1949 (50 U.S.C., 403j) is the basis for CIA exemption from the competitive service, and would appear to be operative in this instance. The reference to "preference eligible" is covered in comments on Sections 302-305.

N.B. A more specific exemption from the competitive service is in the proposed Charter Legislation.

Title III, Staffing

Section 301 amends Chapter 31 of title 5, U.S.C., by inserting a new section.

Section 3111, page 50

Provides for the acceptance of volunteer services by students as defined in the section.

Comment:

This is a permissive staffing provision, and requires no exemption for CIA.

Section 302 amends Section 2108 of title 5, U.S.C.

Section 2108, page 50

This section amends the definition of a "preference eligible" by several restrictions.

Section 303(a) amends Chapter 31, title 5, U.S.C., by adding a new section.

Section 3112, page 51

Provides for noncompetitive appointment of disabled veterans under certain conditions.

Section 304 amends Chapters 33 and 21 with revisions for the restrictions on preference eligible, appointments, placement on eligible list, et al.. It also provides some revisions for selection processes for the competitive service, establishes probationary period in the competitive service for initial appointment to supervisory or managerial positions (Section 3321, page 55).

Section 305 amends Section 3501(a) of title 5, U.S.C., continuing the restrictions on the "preference eligible" benefits. N.B. The Agency has long held it is exempt from the provisions of the Veterans Preference Act, but we understand this position is now under review by OGC. Exemption from these amendments would serve no purpose if, by some new reasoning, we were held to be subject to the Veterans Act and thereby have to deal with "preference eligibles" as a whole.

Section 306 amends Section 4103 of title 5, U.S.C., by adding a new subsection.

Section 4103(b)(1), page 59

Provides authority for an agency to train an employee for placement in another agency if the employee would otherwise be separated under conditions which would entitle such employee to severance pay.

Comment:

The Agency is bound by the provisions of Chapter 41. This new provision is an advantage and poses no problem.

Section 307 amends Section 5723(d) of title 5, thereby delegating to the agencies the authority to determine manpower shortage categories for payment of EOD travel.

Comment:

OGC holds Agency is bound by Chapter 57 provision for EOD travel. This new provision is a benefit.

Section 308 (page 60) amends Section 8346(d)(2) of title 5 to broaden the retirement eligibility when there is a major reorganization, reduction in force, or major transfer of function.

Comment:

No problem for CIA.

Section 309 (page 61) amends Section 2014(b) of title 38. Provides some Vietnam era veteran appointment rights.

Comment:

OGC holds Agency is not subject to Veterans Preference Act.

Title IV - Senior Executive Service

Section 401 amends Chapter 21 of title 5 by inserting a new Section 2101(a).

Section 2101(a), page 62

Establishes the Senior Executive Service . . . above GS-15 and below EP III.

Section 402(a) revises Chapter 31 of title 5 by adding a new Subchapter II, The Senior Executive Service.

Section 3132-3136, page 63-74

These sections provide for the SES, and list the objectives of the Service.

Comment:

Section 3132(a) (1) excludes CIA from Subchapter 31, e.g., "agency means an agency referred to in Section 2301(a) (without regard to para 1(B), 1(C) and 2(D)) of this title . . ." The specific CIA exemption is in 2301(a) (2) (B). Exemption from Chapter 31 which establishes SES would extend to all other references to SES in title 5, U.S.C.

Section 403(a) amends Chapter 33 of title 5 by adding new sections.

Section 3391-3397, pages 75-82

Provides for the appointment, placement, transfer, and development of the Senior Executive Service.

Section 404 amends Chapter 35 of title 5 by adding new items to Subchapter V.

Section 3591-3594, pages 82-86

Provides for the removal, reinstatement and placement provisions of the SES.

Section 405 amends Chapter 43 of title 5 by inserting new Subchapter II.

Section 4311-4314, pages 86-90

Provides for performance appraisal in SES.

Section 406 amends Chapter 45 of title 5 by adding new section, Section 4507.

Section 4507, page 90

Provides for incentive pay for SES.

Section 407 amends Section 5308 of title 5.

Section 5308, page 91 and Section 5381-5385, pages 92-96

Establishes pay rates and systems for SES including individual executive pay and performance awards.

Section 408 amends Chapter 55 of title 5.

Section 5541, page 96

Editorial amendments to provide for the special SES pay.

Section 409 amends Chapter 57 of title 5.

Sections 5723 and 5752, page 97

Authorizes reemployment interview travel expenses for SES.

Section 410 amends Chapter 63, title 5. Permits SES to accumulate unlimited annual leave.

Section 411 amends Chapter 75 of title 5 by adding a new Subchapter V.

Section 7541-7543, pages 98-101

Provides for disciplinary action for SES.

Section 412 amends Section 8336 of title 5 to provide SES in the retirement system.

Section 413 amends Chapter 31 of title 5 to provide the rules for conversion to SES, both employees and positions,

Title V - Merit Pay

Section 501 amends Part III of title 5 to add a new chapter, Merit Pay.

Section 5401-5404, page 107

Establishes a new merit pay system for GS 13-15 supervisors in lieu of former step increase system and amends the incentive awards program to increase the limits of the cash awards.

Comment:

This section contains no exemptions. The Agency follows the provisions of Chapter 53 and 55, Pay Rates and Systems and Pay Administration, though we hold it is done by adoption on basis of Section 8a of the CIA Act of 1949. We believe, however, that a specific exemption would be appropriate for the new Chapter 54 which establishes a new pay system for certain employees.

Section 502, page 114. Conforming and technical amendments to a number of sections to reflect the changes created by a Merit Pay System.

Section 503, page 116 sets the effective day of the Merit Pay System.

Recommendation:

✓ CIA should request an exemption as inclusion would abrogate

the Director's authority to establish pay systems to meet the operating requirements of the Agency. This Merit Pay is designated for the competitive system of "rank in position" rather than the Agency's modified "rank in person" system.

Title VI - Research, Demonstration and Other Programs

Section 601 amends Part III of title 5 by adding a new Chapter 47, Research, Demonstration and Other Programs.

Section 4701-4706, pages 116-123

Establishes research and development functions of OPM in areas of improved methods and technologies in Federal personnel management, including demonstration projects. Provides for funding, reports, et al.

Comment:

CIA is not exempt. The only specific exemption is a reference to 2301(a)(2)(D), "an agency excluded by the President."

While it is unlikely the OPM would insist on establishing and evaluating research and development projects in CIA, it is probably best to ask for an exemption.

Recommendation:

✓ CIA should ask for an exemption by revision of Section 4701(1) to include CIA.

Section 602 amends Section 208 of the Intergovernmental Personnel Act of 1970. Extends coverage to Trust Territory of the U.S. Also establishes as a condition of participation a system of personnel

administration consistent with the personnel standards established by OPM.

Comment:

CIA does not participate in the IPA program. The amendments are minor and do not affect the basic structure of the program hence if we were to take part, these amendments would pose no administrative or security problem.

Section 603 amends Sections 3371, 3372, 3374 of title 5 to include the necessary revisions to track with the changes to the IPA Act of 1970 proposed in Section 602 above.

Title VII - Miscellaneous

Section 701 - The Saving Provisions of the Bill.

Section 702 - Authorization of Appropriations.

Section 703 - Provisions for Presidential Authorities.

Section 704 - Technical and Conforming Amendments.

Section 705 - Effective Dates (90 days after enactment of the Act).

DDA
File 04M-5

Civil Service Reform Bill of 1978

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[redacted]
Assistant for Information, DDA
7D-02, Hqs.

5117

DDA 78-0545/7

20 March 1978

Legislative Counsel

ATTN: [redacted]

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The attached comments have been prepared by the Office of Personnel on the Civil Service Reform Bill of 1978 identifying the specific items for which exemptions should be sought. The comments should be of use to OLC in its continuing dialogue with OMB and the CSC on this subject. I think we are in agreement that in articulating the need for CIA exemption from these provisions of law, we must emphasize that we are seeking exemption from the mechanics of the law and not that we are rejecting the principles (of merit, EEO, etc.) which the new legislation is designed to enhance.

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AI/DDA [redacted] ydc (20 Mar 78)

Distribution:

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- ✓ - DDA Subject w/Orig of att
- 1 - DDA Chrono
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Att: DDA 78-0545/6 - Memo for DDA from D/Pers dtd 14 Mar 78, same subject

Att: a/s

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Remarks:					
<p>1- 3/5-6</p> <p>OLC ([Redacted])</p> <p>confirms that OLC is also working up comments on the current draft bill but their comments are not yet ready for OP review (over)</p>					
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*I would urge that
O.C.'s comments be reviewed
before Jack Blake contacts
Alan Campbell -*



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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: F. W. M. Janney
Director of Personnel
5E 58 Hqs.

EXTENSION

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DATE

14 MAR 1974

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TO: (Officer designation, room number, and building)

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COMMENTS (Number each comment and draw a line across column to whom comment is directed.)

1. Executive Officer to the
DDA
7D 18 Hqs.

3/15

5. We are advised that [redacted] has been in contact with [redacted] the subject of the [redacted] [redacted]

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3. Associate Deputy Director
for Administration
7D 18 Hqs.

F. W. M. Janney

5. Deputy Director for
Administration
7D 18 Hqs.